



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

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R-329

May 10, 1954

Honorable Weldon Hart  
Chairman and Executive Director  
Texas Employment Commission  
Austin, Texas

Letter Opinion No. MS-130

Re: Permissibility of refund  
by the Texas Employment  
Commission of taxes errone-  
ously collected for a  
four year period closing  
on August 18, 1952.

Dear Mr. Hart:

We quote from your letter as follows:

"Under the judgment of the Supreme Court of Texas in Cause No. A-4219, Todd Shipyards Corporation v. Texas Employment Commission, et al., it becomes necessary for the Texas Employment Commission to request your opinion as to the legality and the effect of the action which it took on July 29, 1952, as reflected by the attached copy of its minutes. Attached also is a copy of the Commission's August 18, 1952, letter which was mailed to unemployment taxpayers as of that date.

"1. Was the action reflected by the minutes valid under the law to accomplish the purpose stated in the minutes?

"2. Assuming that your answer to question No. 1 is 'yes', is the Commission authorized, under Subsection 14(j) of the Texas Unemployment Compensation Act (Art. 5221b-12(j), V.C.S.), in view of the decision in the Todd Shipyards Corporation case and its July 29, 1952, action, to make refunds of contributions which, had they been legally due, would have become due within the four-year period ending July 29, 1952, in the case of all taxpayers in the same position as Todd Shipyards Corporation?"

We quote the copy of the minutes of the action the Commission took on July 29, 1952:

"After due notice, the Texas Employment Commission met in its offices at 11:00 a.m., on Tuesday, July 29,

1952. Present at said meeting were Dwight Horton, employer representative who presided, and Dean W. Maxwell, employee representative. The meeting was held for the purpose of taking action to afford and accord to all taxpaying employers in the same class entitled thereto the same treatment which was accorded Todd Shipyards Corporation, an unemployment taxpayer, in Cause No. 89,881, in the 53rd Judicial District Court of Travis County, Texas, by judgment entered on July 17, 1952.

"The Commission being of the opinion that it is authorized and directed by Section 14(j)(1) of the Texas Unemployment Compensation Act (Article 5221b-12(j)(1), V.C.S.) to adjust or refund without interest contributions which, after payment, are later determined not due in whole or in part, and being fully apprised of said judgment of said Court which is now on appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, it was moved by Commissioner Horton, seconded by Commissioner Maxwell, unanimously adopted and

"Ordered: that the judgment of said Court, insofar as the announced legal bases for said judgment are concerned, but not insofar as the stated dollar amounts therein are concerned, is hereby, on the Commission's own initiative, made applicable to all taxpaying employers under the Texas Unemployment Compensation Act and that the same principles of law so pronounced in said judgment be and they are hereby ordered made so applicable; and further that said adjustments and refunds and the amount of said adjustments or refunds to all said employers be calculated and made in the amounts and for the sums applicable and calculated under the principles of law announced by the final judgment in said Cause No. 89,881, in the 53rd Judicial District Court of Travis County, Texas, Todd Shipyards Corporation v. Texas Employment Commission, et al., as it is announced by the final appellate authority taking jurisdiction of said cause.

"This action, the Commission hereby takes in order, insofar as legally possible, to insure to all taxpayers in the same class under the Texas Unemployment Compensation Act equal treatment under said law."

We quote, further, the Commission's letter of August 18, 1952:

"TO ALL EMPLOYERS:

"On July 17, the 53rd District Court of Travis County rendered judgment for Todd Shipyards Corporation in its refund suit against the Texas Employment Commission. The Court ordered deletion of all benefit wage charges against Todd which resulted from benefit claims on which Todd alleged it was deprived of due process.

"Todd Shipyards based its suit upon three propositions: First, that no charge could legally be made against its account when it was not given a copy of the initial claim filed by one of its ex-employees. Second, that even when it was given a copy of the initial claim, there could be no legal chargeback when it was not given a copy of the initial determination. And, third, that even though it was given a copy of the claim and a copy of the determination or decision, there could still be no legal benefit wage charge because the initial determination or initial decision did not tell them 'the date on which benefits shall commence.' In brief, Todd's position was that the procedures which the Commission has followed since 1938 are illegal.

"The District Court's decision will, of course, be appealed to the highest courts.

"The Commission believes that all employers similarly situated are entitled to the same treatment which the courts ultimately accord Todd. Therefore, under the authority granted it by law, the Commission took action, on July 29, designed to stop the running of the four-year limitation on refunds to those employers. This means that the Commission has voluntarily done all it can to give all employers equal treatment and has attempted to avoid the necessity on the part of thousands of employers to file applications for refund. It should be understood, however, that any employer who desires to do so can file an application for refund if he deems it necessary. A copy of the minute reflecting this action is attached.

"If the Supreme Court finally upholds the ruling of the District Court, the Commission will then immediately start the computation necessary to the refunds. Employers with minimum tax rates and those who have not been taxpayers long enough to enjoy individual experience ratings will not be entitled to refund, and, of

Hon. Weldon Hart, page 4 (MS-130)

course, there will be no refunds at all if the Supreme Court reverses the District Court. The refunds, if they are finally made, will not cripple the trust fund since it now contains over 260 million dollars and is increasing about 15 million dollars a year."

Section 14(j)(1) of the Texas Unemployment Compensation Act (Art. 5221b-12(j)(1) Vernon's Civil Statutes) provides:

"Where any employing unit has made a payment to the Commission of contributions alleged to be due, and it is later determined that such contributions were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or for a refund thereof because such adjustment cannot be made, and if the Commission shall determine that such contributions or penalty, or any portion thereof were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit, or, if such adjustment cannot be made, the Commission shall refund said amount without interest from the fund, provided that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within four (4) years from the date on which such contributions or penalties would have become due, had such contributions been legally collectible by the Commission from such employing unit. For like cause, and within the same period, adjustment or refund without interest may be so made on the Commission's own initiative."

In the light of the language contained in the last sentence of Section 14(j)(1), we are of the opinion that your questions should be answered in the affirmative.

Yours very truly,

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Attorney General

By  
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Assistant

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